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SUPREME COURT, U.S.

No. 98-125

In The

Supreme Court of the United States

October Term, 1997

JODI GOODWIN, Individually and as next friend of BETTY JO GOODWIN, a minor,

Petitioner,

v.

RANDY HALL,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Wyoming

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Wyoming Supreme Court properly hold that Respondent Randy Hall, a resident of the State of Idaho, lacked sufficient minimum contacts so as to not be properly subject to *in personam* jurisdiction in the State of Wyoming for litigation filed by Petitioner seeking damages for the alleged tortious interference with her maternal rights, which tort is asserted to have been committed by Respondent when he filed a paternity action in the State of Idaho?

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STATEMENT OF THE CASE

A. Procedural History

Petitioner Jodi Goodwin filed a civil complaint individually and purporting to act as the next friend of the parties' minor daughter, Betty Jo Goodwin, on January 13, 1997, in the Second Judicial District, Albany County, Wyoming. She asserted claims for damages for abuse of process, intentional infliction of emotional distress and baseless pleading based upon a paternity and child custody action filed by Respondent Randy Hall in Idaho on January 13, 1995.

Respondent Hall filed a motion to dismiss, challenging the jurisdiction of the Wyoming district court pursuant to United States and Wyoming constitutional, statutory and case law. After considering the briefs of the parties as well as the oral arguments of counsel, the district court determined it lacked personal jurisdiction over Hall in the matter and granted the motion to dismiss.

Petitioner Goodwin filed an appeal of that decision to the Wyoming Supreme Court. After review of the briefs filed by counsel for Petitioner and Respondent, the Wyoming Supreme Court refused to adopt a new standard of jurisdictional analysis in child custody dispute matters. (Petitioner had suggested that the Wyoming court adopt a position that "[w]ith respect to all matters relative to his

or her child, a parent is subject to personal jurisdiction in the state where the child resides." Pet. at App. 5.[1])

Contrary to Petitioner's recital in the Petition for Writ of Certiorari, the Wyoming Supreme Court did not apply an improper balancing test in analyzing the jurisdictional issue. Instead, "finding solace in both our own and the United States Supreme Court's time-honored three-step analysis of *in personam* jurisdiction questions", it declined to adopt a new approach for parental disputes. Pet. at App. 6.

It was noted that no issue of general jurisdiction of Wyoming courts with respect to Respondent Hall was present in this case. Pet. at App. 6. The court then reiterated Wyoming's long-standing three-part test that establishes the boundaries of personal jurisdiction *based upon a single act*: 1) the defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state, 2) the cause of action must arise from the consequences in the forum state of the defendant's activities, and 3) the activities of the defendant or the consequences of those activities must have a substantial enough connection with the forum state to make the exercise of jurisdiction reasonable. Pet. at App. 6. The court noted that the purposeful availment criteria is threshold to a finding of jurisdiction in order to ensure that a defendant will not be haled into a jurisdiction solely as a result of "random", "fortuitous", or "attenuated" contacts, citing *Burger King Corp. v.*

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[1] Throughout this brief, "Pet." refers to the Petition for Writ of Certiorari and "App." refers to the appendix in the Petition.

Rudzewicz, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183 (1985). Pet. at App. 7.

The Wyoming Supreme Court stated accurately that unless the purposeful availment requirement is satisfied, the court will not have personal jurisdiction over the nonresident "no matter how strong the interest of the plaintiff or the forum state may be in having the suit adjudicated there" citing this Court's holding in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294, 100 S.Ct. 559, 565-66 (1980). Pet. at App. 7.

The Wyoming Supreme Court held that the facts alleged by Petitioner did not establish that Respondent Hall had purposefully availed himself of the privilege of acting in Wyoming. Pet. at App. 7. The court stated that Petitioner Goodwin failed to establish that Respondent Hall had sufficient contacts with Wyoming to require him to come to Wyoming to defend her claims against him. It noted that Petitioner could file her action against Respondent in Idaho and find relief there. Therefore, the district court's order dismissing the case for lack of personal jurisdiction was affirmed. Pet. at App. 8.

B. The Underlying Dispute

This is a case of unrelenting parental discord and unrequited animosity. It arises from a paternity/child custody fight these parents waged for several years in both Idaho and Wyoming. The critical allegation is as follows: an abuse of process committed by Respondent Hall in the State of Idaho was effectuated by the filing of

a false affidavit before an Idaho magistrate and a misleading affidavit, "false by its omissions" before a different Idaho magistrate, in paternity actions filed by Mr. Hall in Idaho.

The parties' minor child was conceived and born in Idaho. She had been moved continuously by Petitioner in her short life, living for a time with Mr. Hall's parents in Idaho. She had also resided in Wyoming for approximately one year prior to her being given by the Petitioner to the child's paternal grandmother (Mr. Hall's mother) to live in Idaho in 1994. Six months later, Mr. Hall filed a paternity action in Idaho to establish his parental rights. He sought temporary custody of the child in that action. Pursuant to Idaho law, Mr. Hall effectuated service of process of the Idaho action upon the Petitioner in Wyoming. (The parties subsequently stipulated to Mr. Hall's paternity of the child, and custody and visitation rights have now been established as well.) *The service of process is the only action alleged to have occurred in the State of Wyoming. All other wrongful actions of which the Petitioner complained occurred in the State of Idaho.*

REASONS TO DENY THE WRIT

A. The Supreme Court of the State of Wyoming has not decided an important federal question in a way that conflicts with any decision of another state supreme court or of a United States court of appeals.

Pursuant to Supreme Court Rule 10(b), one of the circumstances that may warrant the granting of a petition

for writ of certiorari is where a state court of last resort has decided an important federal question contrary to another state's decision or that of a federal court of appeals. Petitioner has failed to show that this particular portion of the rule is applicable in the instant case. She cites no cases in which any court anywhere in the country has adopted her proposed new standard of personal jurisdiction for parental feuds.

B. The question presented in the Petition does not implicate an important question of federal law that has not been, but should be, settled by this Court.

The Wyoming Supreme Court correctly applied the federal standard as to a state court's assertion of *in personam* jurisdiction over a nonresident: the defendant must have at least minimum contacts with the forum state to satisfy the due process standard. Pet. at App. 5.

It is clear the United States Supreme Court has over the years kept its eye squarely upon the purpose behind the limits of the due process clause on state court jurisdiction over nonresidents.

> Since *Pennoyer v. Neff*, 95 U.S. 714, this Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. . . . Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is

> attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity. *McGee v. International Life Insurance Co.*, 355 U.S. 220, 222-223 (1957).

Not long after the *McGee* case, the Court, in *Hanson v. Denckla*, 357 U.S. 235 (1958), reminded us that despite the nationalistic trends of this century, there are still viable limits on a state court's power to exercise personal jurisdiction over nonresidents:

> But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. [Citations omitted.] Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limits on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the "minimal contacts" with that State that are a prerequisite to its exercise of power over him. 357 U.S. at 250-251.

Petitioner attempts to invoke the sympathy of the Court for the fact that she is a mother seeking to redress perceived wrongs to her and the parties' child and that she should be accorded at least as much protection as

those in the commercial arena. Her argument is misdirected. It is the Respondent, the defendant hereinbelow, the recipient of unwanted litigation, whose due process rights are to be protected. In this case, Respondent Hall did not place himself in the stream of interstate commerce thus knowingly exposing himself for purposes of acquiring commercial gain to the risks of interstate commercial litigation. He acted as an individual, a father seeking to establish his paternal rights. His behavior and his right to due process protection should be adjudged on that basis, not as a multi-state player in the business arena.

In its decision below, the Wyoming Supreme Court carefully analyzed the first element of the three-prong test, recited at page 3 of this Brief, established in *First Wyoming National Bank, N.A. Rawlins v. Trans Mountain Sales and Leasing, Inc.*, 602 P.2d 1219 (Wyo. 1979): whether the Respondent had purposefully availed himself of the privilege of acting in Wyoming by virtue of the sole and isolated action of serving process of an Idaho paternity petition upon Petitioner in Wyoming. As the Wyoming court noted, Petitioner presented no authority that service of process within one state to obtain appearance in a suit brought in another state constitutes purposeful availment. Pet. at App. 7. Nor does Petitioner cite any such authority herein.

The purposeful availment requirement is not something that should be abandoned by this Court, no matter how strong the purported interest of a plaintiff. To do so would wipe out years of established due process protection for the citizens of this country. The importance of such a departure should not be measured by its impact

upon these litigants, but its impact upon the rights of all persons under the U.S. Constitution.

It is proposed by the Petitioner that based upon the mere fact that she is a resident of Wyoming and considers her maternal rights to have been assailed, a new rule must emerge for this special circumstance: where the State of Wyoming is the residence of any minor child, both parents are thus subject to *in personam* jurisdiction by the Wyoming courts and monetary and punitive damage awards may be entered by the courts of Wyoming against nonresident parents, not simply for support obligations, but for any sort of tortious conduct one parent perceives the other has rendered, not just to the child, but to that offended parent. Surely, there is not such a glut of parental interference and tort cases based upon parental wrongs waiting for redress that a new rule should be established discarding long-standing precepts of due process protection, lowering the threshold of jurisdiction and inviting protracted parental legal bashing. Such a national approach cannot be in the best interests of the unfortunate children caught in the middle.

CONCLUSION

The bare fact of injury to a resident has never been sufficient to empower the courts of a state to exercise jurisdiction over a nonresident. Despite Petitioner's importunities, considerations of due process must still be the final determinant of the exercise of such jurisdiction.

Sound judicial policy will not abandon the constitutionally imposed limitations followed for so many years by our legal system.

The due process clause does not allow a state to make binding a judgment *in personam* against an individual defendant with whom the state has no contacts, ties or relations. Even if the Respondent would suffer minimal inconvenience from being forced to litigate before the courts of the State of Wyoming, even if Wyoming has a strong interest in applying its law to the controversy, even if Wyoming is the most convenient location for litigation for Petitioner, the due process clause, acting as an instrument of interstate federalism, will, in the appropriate case, act to divest the state of its power to render a valid judgment. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). This is such a case, and the Petition for Writ of Certiorari to the Supreme Court of Wyoming should be denied.

Respectfully submitted,

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